

## **PUBLIC MEETING MINUTES**

October 9, 2014

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Chair Martinez called the meeting to order at 10:00 a.m.

### **Members Present**

Anita I. Martinez, Chair  
A. Eugene Huguenin, Member  
Priscilla S. Winslow, Member  
Eric R. Banks, Member

### **Staff Present**

Wendi Ross, Acting General Counsel  
Shawn Cloughesy, Chief Administrative Law Judge (Excused)  
Mary Ann Aguayo, Chief Administrative Officer  
Loretta van der Pol, Division Chief, State Mediation & Conciliation Service

### **Call to Order**

After establishing that a quorum had been reached, Chair Martinez called the meeting to order for a return to the open session of the August 14, 2014, Public Meeting. She reported that the Board met in continuous closed session to deliberate the pending cases on the Board's docket, pending requests for injunctive relief, pending litigation and personnel matters, as appropriate.

Chair Martinez read into the record the decisions that issued since the open session in August. Those were PERB Decision Nos. 2389, 2390, 2391-H, and 2392-C, and Order Nos. Ad-415-M, 416-C, 417 and IR-58. The following Requests for Injunctive Relief (IR Request) were filed: No. 666 (*State of California (CalHR) v. International Union of Operating Engineers, Local 39*), the request was withdrawn; No. 667 (*State of California (CalHR) v. International Union of Operating Engineers, Local 39*), the request was withdrawn; No. 668 (*Federated University Police Officers Association v. Regents of the University of California (Davis)*), the request was withdrawn; No. 669 (*Richard C. White v. San Bernardino Public Employees Association*), the request was denied; No. 670 (*United Food & Commercial Workers Local 1428 v. County of San Bernardino*), the request was denied; and No. 671 (*City of Vacaville v. International Union of Operating Engineers, Stationary Local 39*), the request was granted, in part. Chair Martinez announced that a document containing a listing of the aforementioned decisions was available at the meeting and that the decisions were available on PERB's website.

**Motion:** Motion by Member Huguenin and seconded by Member Winslow, to close the August 14, 2014, Public Meeting.

**Ayes:** Martinez, Huguenin, Winslow, and Banks.

**Motion Adopted – 4 to 0.**

Chair Martinez adjourned the August 14, 2014 Public Meeting. She then opened and called to order the October 9, 2014 Public Meeting.

### **Minutes**

**Motion:** Motion by Member Winslow and seconded by Member Huguenin that the Board adopt the minutes for the August 14, 2014, Public Meeting.

**Ayes:** Martinez, Huguenin, Winslow, and Banks.

**Motion Adopted – 4 to 0.**

### **Comments from Public Participants**

None.

### **Staff Reports**

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

#### **A. Division of Administration**

Chief Administrative Officer Mary Ann Aguayo reported on the following:

##### **Budget:**

- i The Division of Administration had reconciled the budget for the first two months of the fiscal year. A simple bar chart, including a summary, had been distributed to the Board. This had been the first time the chart had been generated capturing PERB's major budget categories. A more complete budget projection would be distributed at the Public Meeting in December.
- i The Division was in the process of building the Fiscal Year 2015-2016 budget with the Department of Finance's (DOF) process. This included base uploads into the new Fi\$Cal system format in August, an update to the salaries and wages supplement, and in this month, the budget galley. In August, PERB submitted one budget change proposal (BCP), and was answering questions and providing additional data to DOF. Should the BCP survive this process, it would be included in the Governor's budget published in January 2015 and begin review through the Legislature.

##### **Facilities:**

- i Regional Offices (Oakland and Glendale): Work continues with the Department of General Services (DGS) on the office expansions in the two Regional Offices. Oakland is scheduled to be complete by November 1. The Regional Office in Glendale had a signed lease but the lessor ultimately rented to another party, resulting in PERB

reverting to the planning stage. Alternatively, there is another space available on the same floor, and PERB expeditiously compiled plans and specifications regarding that space. DGS has requested and is awaiting an opening proposal from the lessor. The proposal would begin the negotiation process, which could take over four weeks to get to a point where PERB could generate a lease document, sign and then begin construction.

- i Headquarters (Sacramento): Minor modifications—6x24-inch window panes were installed in hearing and break-out room doors for security purposes.

#### Human Resources:

- i Open enrollment for modifying employee benefit options and reimbursement accounts for the 2015 calendar year ends tomorrow. Any staff changes after that time would be limited to life changing events as defined by the California Department of Human Resources.
- i The Division has two recruitments underway: Staff Services Manager I and Accounting Administrator I. The latter vacancy would fill the position upon the retirement of the current incumbent, Stephanie Gustin, in December. The goal is to have both positions filled by November.
- i Temporary staffing. Two new student interns had joined the Division this Fall: Caitlyn Cranfill would assist with business operations, including mail and deliveries, and Ali Abbas would assist with budget and accounting operations. Both are students at the California State University, Sacramento, and majoring in Business Administration. Blair Gollihur, had been hired as an Associate Government Program Analyst on a limited term basis to assist with updating and building PERB's mandated policy and procedures, and training.

There was discussion regarding the office expansion in the Glendale Office.

#### B. Office of General Counsel

Acting General Counsel Wendi Ross gave the report for the Office of the General Counsel (GC Office) for the months of August and September 2014. She stated that the monthly activity and litigation reports were distributed to the Board Offices for its review. She highlighted the activity since the Board's regular Public Meeting on August 14, 2014.

Ms. Ross reported that with regard to monthly activities during the past two months (August and September) a total of 167 new cases of all types were filed with the GC Office (down by over 35 over the prior two-month period). During the same two-month period, 140 case investigations were completed (down by 42 over the prior two-month period—due a variety of matters). The GC Office had worked on over 26 litigation assignments in the last two months. Mediation requests were down—13 (there were 34 in the prior two-month period). The GC Office saw an increase in factfinding requests—10 (6 in the prior two-month period), and the number of representation petitions filed was down from the prior two-month period—14 (18).

Ms. Ross provided clarification for Member Huguenin regarding factfinding stating that under the Meyers-Milias-Brown Act (MMBA), unlike the Educational Employment Relations Act (EERA) and the Higher Education Employer-Employee Relations Act (HEERA) where parties are enrolled in factfinding *upon request* after a decision by a mediator, only the exclusive representative may request factfinding under the MMBA.

As mentioned by the Chair, since the last Board meeting in August, the GC Office had investigated all requests for injunctive relief as listed by the Chair.

In terms of new court litigation, since the Public Meeting in August, the following matters were filed by or against PERB:

- *Lewis v. Public Employment Relations Board; City of Oakland*. California Court of Appeal, First Appellate District, Division Two, Case No. A142856; PERB Decision 2387-M [UPC No. SF-CE-808-M]. Whether the Board clearly erred in Decision No. 2387-M.
- *City of Palo Alto v. Public Employment Relations Board; International Association of Firefighters, Local 1319, AFL-CIO*. California Court of Appeal, Sixth Appellate District, Case No. H041407; PERB Decision 2388-M [UPC No. SF-CE-869-M]. Whether the Board clearly erred in Decision No. 2388-M.
- *PERB v. International Union of Operating Engineers, Stationary Engineers Local 39; City of Vacaville*. Solano County Superior Court, Case No. FCS 044181; IR Request No. 671 [UPC No. SF-CO-347-M]. Whether the Union should be enjoined from calling for and conducting a strike, based on the City's allegations that it would be an unlawful strike involving "essential" employees. The parties were able to reach an agreement for a successor MOU prior to the hearing date/time. PERB has since filed a dismissal of the action.

There were three determinations since the last Public Meeting:

- *Glendale City Employees Assn. v. PERB; City of Glendale*. California Supreme Court, Case No. S219922; California Court of Appeal, Second Appellate District, Division P, Case No. B246938; Los Angeles Superior Court Case No. BS137172; PERB Decision No. 2251 [UPC No. LA-CE-672-M]. On September 24, 2014, the California Supreme Court denied the Association's petition for review, as well as PERB's publication request.
- *City of Long Beach v. PERB; IMAW Local 1930, District 947*. California Court of Appeal, Second Appellate District, Division One, Case No. B245981; PERB Decision No. 2296-M [UPC No. LA-CE-537-M]. The Court issued its unpublished decision on August 29, 2014, denying the City's writ petition. And, PERB was currently unaware whether the City would file a petition for review with the California Supreme Court.
- *County of Riverside v. PERB; John Brewington*. California Court of Appeal, Fourth Appellate District, Division Two, Case No. E060017, PERB Decision No. 2336-M [UPC No. LA-CE-261-M]. The County's writ petition was summarily denied. On September 19, 2014, the County filed a "Request for Rehearing" with the Court. The County's request was denied by the Court on October 2, 2014.

### C. Legislative/Rulemaking

In terms of rulemaking and legislation since the last Public Meeting in August, Ms. Ross reported the outcome:

- Vetoed—AB 485 (Gomez). This was a bill regarding the In-Home Supportive Services Employer-Employee Relations Act.
- Vetoed—AB 1550 (Rendon). Dealt with EERA.
- Signed—AB 1611 (Bonta). Dealt with notification requirements of unilateral changes under EERA.
- Vetoed—AB 1834 (Williams). Would have amended the HEERA definition of employee.
- Vetoed—AB 2126 (Bonta & Beall). Would have provided for mandatory mediation and clarification of MMBA factfinding provisions.
- Vetoed—AB 2325 (Perez). Dealt with CommuniCal; vetoed by the Governor similarly as in last year.

Personnel Matters. The GC Office was pleased to welcome as limited-term employees in the Oakland Regional Office: Regional Attorney Jeremy Zeitlin, and Senior Regional Attorney Miles Locker.

Chair Martinez inquired regarding the above-reported litigation matter in *City of Long Beach*. She asked if an extension of time had been requested by the City, and whether their time to file a petition for review had passed. Ms. Ross responded that the City could have filed by overnight delivery and unless the petition had been filed in that manner, the City's time to file the petition had ended.

Member Winslow inquired regarding an item that was not verbally reported at today's meeting. Looking at the elections report which had been provided to the Board for review, in a column entitled "Elections Currently Scheduled", she wanted to know the results of the elections held in the Escalon Consolidated Fire Protection and the Pasadena Associated Teachers matters held in May and June. Ms. Ross stated that she did not readily have the answer to that question and would provide the Board with an updated response.

### D. Division of Administrative Law

Administrative Law Judge Eric Cu reported to the Board in Chief ALJ Shawn Cloughesy's absence. He reported on the activities of the Division of Administrative Law and stated that the Administrative Law Judge (ALJ) report had been distributed to the Board for its review. Mr. Cu stated that he would highlight key points from that report and also would give a perspective based on the Division's past reporting.

- i Scheduling Formal hearings. In the Sacramento and Glendale Offices, formal hearings were being scheduled 3-4 months from the date of the informal settlement conference. In the Oakland Regional Office, formal hearings were scheduled in slightly less time, approximately 3 months. With perspective to this same time last year, the Division is lagging slightly behind, where hearings were scheduled approximately 3 months from the date of the informal settlement conference in all three offices.
- i Caseload. The Division currently has 66 cases assigned for hearing, and 46 cases where hearings have been held and are pending a decision. Both numbers are down from this same time last year (81 cases assigned, and 61 pending decision).
- i Days of hearing. For the current fiscal year the Division has 58 days of hearing. This was higher than last year (44)—believed to be the result of a string of lengthier hearings of 10 days or more.
- i Hearings completed. The number of hearings completed this fiscal year is 14. Approximately the same number as this time last year.
- i Proposed decision issuance. There have been 14 proposed decisions issued so far this fiscal year. Slightly less than this same time last year (17)—it is believed that this number will even out with last year as the fiscal year progresses.
- i Exceptions to proposed decisions. This fiscal year to date, the Division's exceptions rate is approximately 30 percent. Last fiscal year the exceptions rate was 49 percent. Again, it is believed that the numbers may even out as the fiscal year progresses.

#### E. State Mediation and Conciliation Service

Loretta van der Pol, Division Chief, stated that SMCS's report had been distributed to the Board. Ms. van der Pol stated that the Division had a light case processing month in September due to several weeks of vacation scheduled by various staff in an attempt to draw down high leave balances.

- i Case processing. Similar to what has been described by the GC Office and ALJ Division, SMCS opened only 51 cases in September (lower than the 59 new cases at this same time last year), including impasses. This was not what was anticipated by the Division; it was believed that impasse requests would be high, although the Division had just begun to receive impasse requests this week (there may have been a lag in negotiations). SMCS closed 40 cases during the month (as opposed to 67 in the prior year, explained by the number of staff on vacation). The fact that SCMS closed the month with an active caseload of 122 cases was basically normal.
- i Case management system. Ms. van der Pol reported that SMCS was investigating a slight glitch in its case management system which involved the reporting for two staff, herself and one other person. It is hoped it was a coincidence and that there was possibly an overlap with the new case management system (that the two who were causing the glitch were testing at the same time and that perhaps interfered with the existing system).

- i Representation cases. SMCS had 13 active representation cases during the month, including card checks, election set-ups, and actual elections. Six representation cases were completed during the month and 3 were on hold pending the outcome of PERB charges or other adjudications. The last 4 cases were in the process of being scheduled.
- i Recruitment. The recruitment for conciliator was open for two weeks longer than the minimum to allow additional time for advertisements. There were 25 applications received. This was the lowest number of applications that SMCS had ever received and it was not known at this time how many of those applicants meet the minimum qualifications. SMCS would conduct an exam at the end of this month to establish a list of eligibles, but does not anticipate a robust list. That would depend on the caliber of the applicants received.
- i Staff training.
  - o Training was planned for the SMCS office technician. The first phase of basic training was complete, the office technician was being allowed to exercise those skills, and advanced training would be provided at a future date.
  - o Training would also be conducted this afternoon and all day tomorrow in PERB's Oakland Regional Office for SMCS staff on chargeable services. This training had never been provided before to staff and had been done so on an ad hoc basis as staff indicated interest in performing such work. Given SMCS's small staff, staff needed to be willing and able to perform chargeable services. Training would be conducted on conflict resolution work this afternoon, in addition to the administration of chargeable work. The second day of training would focus on interest-based bargaining and joint labor management committee work.
- i Arbitrator panel. The last of the arbitrator panel membership fees, \$2,250, were received this month. SMCS inactivated 7 arbitrators who had not paid or who had not contacted the Division about becoming inactive, and one retired. The arbitrator panel now consists of 114 active arbitrators.
- i PERB website. Improvements and a correction of problems were being made with the SMCS pages on the PERB website where there are broken links and outdated information.
- i SMCS had been asked to participate in the 67th Annual LERA Meeting. This year the focus of the meeting across the country has been on training and training services, and attempting to adopt a best practices for neutrals. The conference is in May 2015 in Pittsburg, Pennsylvania. Ms. van der Pol would be a member on two panels if the request for out-of-state travel is approved.

**Motion:** Motion by Member Huguenin and seconded by Member Banks that the Division of Administration, Office of the General Counsel, Legislative/Rulemaking, Division of Administrative Law, and SMCS reports be accepted and filed.

**Ayes:** Martinez, Huguenin, Winslow, and Banks.

**Motion Adopted – 4 to 0.**

### **Old Business**

None.

### **New Business**

None.

### **General Discussion**

Chair Martinez announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through December 11, 2014, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code, sec. 11126(c)(3)), personnel (Gov. Code, sec. 11126(a)), pending litigation (Gov. Code, sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code, sec. 11126(e)(2)(c)).

**Motion:** Motion by Member Banks and seconded by Member Huguenin to recess the meeting to continuous closed session.

**Ayes:** Martinez, Huguenin, Winslow, and Banks.

**Motion Adopted – 4 to 0.**

Respectfully submitted,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Anita I. Martinez, Chair